

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 141, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 34-6-2-38, AS AMENDED BY P.L.142-1999,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: Sec. 38. (a) "Employee" and "public employee",
- 5 for purposes of **section 91 of this chapter**, IC 34-13-2, IC 34-13-3,
- 6 IC 34-13-4, and IC 34-30-14, mean a person presently or formerly
- 7 acting on behalf of a governmental entity, whether temporarily or
- 8 permanently or with or without compensation, including members of
- 9 boards, committees, commissions, authorities, and other
- 10 instrumentalities of governmental entities, volunteer firefighters (as
- 11 defined in IC 36-8-12-2), and elected public officials.
- 12 (b) The term also includes attorneys at law whether employed by the
- 13 governmental entity as employees or independent contractors and
- 14 physicians licensed under IC 25-22.5 and optometrists who provide
- 15 medical or optical care to confined offenders (as defined in IC 11-8-1)
- 16 within the course of their employment by or contractual relationship
- 17 with the department of correction. However, the term does not include:
- 18 (1) an independent contractor (other than an attorney at law, a
- 19 physician, or an optometrist described in this section);
- 20 (2) an agent or employee of an independent contractor;
- 21 (3) a person appointed by the governor to an honorary advisory or

1 honorary military position; or

2 (4) a physician licensed under IC 25-22.5 with regard to a claim
3 against the physician for an act or omission occurring or allegedly
4 occurring in the physician's capacity as an employee of a hospital.

5 (c) A physician licensed under IC 25-22.5 who is an employee of a
6 governmental entity (as defined in IC 34-6-2-49) shall be considered
7 a public employee for purposes of ~~IC 34-13-3-3(20)~~. **IC 34-13-3-3(21)**.

8 SECTION 2. IC 34-6-2-44.5 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: **Sec. 44.5. (a) "Extreme sport area", for**
11 **purposes of IC 34-13-3, means an indoor or outdoor ramp, course,**
12 **or area specifically designated for the exclusive recreational or**
13 **sporting use of one (1) or more types of extreme sport equipment.**

14 **(b) The term does not include property used at any time as a**
15 **public sidewalk, footpath, vehicle parking lot, multiple use trail,**
16 **multiple use greenway, or other public way.**

17 SECTION 3. IC 34-6-2-44.6 IS ADDED TO THE INDIANA CODE
18 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
19 UPON PASSAGE]: **Sec. 44.6. "Extreme sport equipment", for**
20 **purposes of section 44.5 of this chapter and IC 34-13-3, means any**
21 **of the following nonmotorized devices:**

22 **(1) Skateboards.**

23 **(2) Roller skates.**

24 **(3) Inline skates.**

25 **(4) Freestyle bicycles.**

26 **(5) Mountain bicycles.**

27 **(6) An apparatus that is:**

28 **(A) wheeled;**

29 **(B) recreational or sporting in nature;**

30 **(C) powered solely by the physical efforts of the user; and**

31 **(D) generally known, as the term is used in Rule 201 of the**
32 **Indiana Rules of Evidence, as an apparatus used for**
33 **extreme sport.**

34 SECTION 4. IC 34-6-2-49 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 49. "Governmental**
36 **entity", for purposes of section 91 of this chapter, IC 34-13-2,**
37 **IC 34-13-3, and IC 34-13-4, means the state or a political subdivision**
38 **of the state.**

39 SECTION 5. IC 34-6-2-91 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 91. (a) "Operator",**
41 **for purposes of IC 34-30-3, means a person who is an owner, a lessee,**
42 **a tenant, or an occupant of land or premises that are used in the**

1 production of agricultural products.

2 (b) "Operator", for purposes of IC 34-31-6, means a person or an
3 entity, **other than a governmental entity or an employee of a**
4 **governmental entity**, that owns, manages, controls, directs, or has
5 operational responsibility for a roller skating rink.

6 SECTION 6. IC 34-13-3-3, AS AMENDED BY P.L.142-1999,
7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 UPON PASSAGE]: Sec. 3. A governmental entity or an employee
9 acting within the scope of the employee's employment is not liable if
10 a loss results from **the following**:

- 11 (1) The natural condition of unimproved property.
- 12 (2) The condition of a reservoir, dam, canal, conduit, drain, or
13 similar structure when used by a person for a purpose that is not
14 foreseeable.
- 15 (3) The temporary condition of a public thoroughfare **or extreme**
16 **sport area** that results from weather.
- 17 (4) The condition of an unpaved road, trail, or footpath, the
18 purpose of which is to provide access to a recreation or scenic
19 area.
- 20 (5) **The design, construction, control, operation, or condition**
21 **of an extreme sport area, if all entrances to the extreme sport**
22 **area are marked with:**

- 23 (A) **a set of rules governing the use of the extreme sport**
24 **area;**
- 25 (B) **a warning concerning the hazards and dangers**
26 **associated with the use of the extreme sport area; and**
- 27 (C) **a statement that the extreme sport area may be used**
28 **only by persons operating extreme sport equipment.**

29 **This subdivision shall not be construed to relieve a responsible**
30 **governmental entity from the continuing duty to maintain**
31 **extreme sports areas in a reasonably safe condition.**

- 32 (6) The initiation of a judicial or an administrative proceeding.
- 33 ~~(6)~~ (7) The performance of a discretionary function; however, the
34 provision of medical or optical care as provided in IC 34-6-2-38
35 shall be considered as a ministerial act.
- 36 ~~(7)~~ (8) The adoption and enforcement of or failure to adopt or
37 enforce a law (including rules and regulations), unless the act of
38 enforcement constitutes false arrest or false imprisonment.
- 39 ~~(8)~~ (9) An act or omission performed in good faith and without
40 malice under the apparent authority of a statute which is invalid
41 if the employee would not have been liable had the statute been
42 valid.

- ~~(9)~~ **(10)** The act or omission of anyone other than the governmental entity or the governmental entity's employee.
- ~~(10)~~ **(11)** The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.
- ~~(11)~~ **(12)** Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.
- ~~(12)~~ **(13)** Entry upon any property where the entry is expressly or impliedly authorized by law.
- ~~(13)~~ **(14)** Misrepresentation if unintentional.
- ~~(14)~~ **(15)** Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.
- ~~(15)~~ **(16)** Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.
- ~~(16)~~ **(17)** Injury to the person or property of a person under supervision of a governmental entity and who is:
- (A) on probation; or
 - (B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, or a community corrections program under IC 11-12.
- ~~(17)~~ **(18)** Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.
- ~~(18)~~ **(19)** Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.
- ~~(19)~~ **(20)** Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b). ~~or~~
- ~~(20)~~ **(21)** An error resulting from or caused by a failure to

1 recognize the year 1999, 2000, or a subsequent year, including an
 2 incorrect date or incorrect mechanical or electronic interpretation
 3 of a date, that is produced, calculated, or generated by:

4 (A) a computer;

5 (B) an information system; or

6 (C) equipment using microchips;

7 that is owned or operated by a governmental entity. However, this
 8 subdivision does not apply to acts or omissions amounting to
 9 gross negligence, willful or wanton misconduct, or intentional
 10 misconduct. For purposes of this subdivision, evidence of gross
 11 negligence may be established by a party by showing failure of a
 12 governmental entity to undertake an effort to review, analyze,
 13 remediate, and test its electronic information systems or by
 14 showing failure of a governmental entity to abate, upon notice, an
 15 electronic information system error that caused damage or loss.

16 However, **this** subdivision ~~(20)~~ expires on June 30, 2003.

17 SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) The definitions**
 18 **in IC 34-6-2 apply throughout this SECTION.**

19 **(b) IC 34-13-3-3, as amended by this act, applies to a cause of**
 20 **action involving an extreme sport area that accrues after the**
 21 **effective date of this SECTION, regardless of when the extreme**
 22 **sport area was developed.**

23 SECTION 8. **An emergency is declared for this act.**

(Reference is to SB 141 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 0.

Senator Long, Chairperson